

Letter of Findings Number: 04-20100137P
Sales Tax
For the Years 2004-2008

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ISSUE

I. Sales Tax—Retail Merchant Status.

Authority: IC § 6-2.5-8-1; IC § 6-8.1-5-1; Cowden & Sons v. Indiana Dep't of State Revenue, 575 N.E.2d 718 (Ind. Tax Ct. 1991).

Taxpayer protests the Department's determination that it is a retail merchant.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana. Taxpayer's principal business is computer consulting. As necessary, Taxpayer ordered equipment on behalf of its customers and then sold the equipment to the customers at Taxpayer's cost. Taxpayer did not file sales tax returns and did not register as a retail merchant for sales tax purposes.

The Indiana Department of Revenue ("Department") audited Taxpayer. The Department determined that Taxpayer acted as a retail merchant in certain transactions and imposed sales tax on the tangible personal property sold in those transactions. Taxpayer protested the imposition of sales tax. Additional information will be supplied as necessary.

I. Sales Tax—Retail Merchant Status.

DISCUSSION

Taxpayer protests the assessment of additional sales tax with respect to various transactions. In particular, Taxpayer argues that it is primarily engaged in computer problem diagnosis repair for its customers.

According to Taxpayer, it generally does not provide tangible personal property to its customers. However, in certain circumstances, a customer may require tangible personal property. Taxpayer asserts that, in those circumstances, Taxpayer will purchase the property and remit sales tax to the vendor on that property, then list the property at the original purchase price on the customer's invoice. Taxpayer maintains that it is a service provider rather than a retail merchant; therefore, Taxpayer states the tangible personal property transferred to its customers are not retail sales, which relieves Taxpayer of both sales tax collection duties and registration requirement under IC § 6-2.5-8-1. The issue is whether Taxpayer is in fact a retail merchant.

Under IC § 6-8.1-5-1(c):

(c) If the person has a surety bond guaranteeing payment of the tax for which the proposed assessment is made, the department shall furnish a copy of the proposed assessment to the surety. The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

Thus, Taxpayer bears the burden of demonstrating that the proposed assessment in dispute is incorrect.

The Indiana Tax Court, in Cowden & Sons v. Indiana Dep't of State Revenue, 575 N.E.2d 718 (Ind. Tax Ct. 1991) provides guidance on when an apparent seller of tangible personal property may not be a retail merchant. In Cowden, roughly ninety-five percent of the taxpayer's business constituted hauling stone for its customers. For these customers, the taxpayer transported stone from a quarry to a construction site. The contractors were charged by the quarry; therefore, the taxpayer was only paid for hauling the stone. For the other five percent—small purchasers who did not have accounts at the quarries—the taxpayer paid for the rock at the quarry and in turn sold the rock (along with the taxpayer's transportation service charge) to the end customer at cost. The Indiana Tax Court held that the taxpayer was not a retail merchant but rather purchasing and "selling" the stone as a convenience to its customers. Therefore, the court held that the taxpayer was not a retail merchant. Id. at 722.

In this case, Taxpayer has established that it sold the tangible personal property at cost as a convenience to its customers, rather than as a true reseller of the property. Taxpayer has established that it only purchased the property in question when necessary and did not maintain an inventory of property. Further, Taxpayer has established that it only "sold" the property at Taxpayer's cost. In these respects, Taxpayer has established that its business closely enough resemble the taxpayer in Cowden to conclude that it should not be regarded as a retail merchant but rather as a service provider. Thus, Taxpayer has provided sufficient information to conclude that the Department's determination that it is a retail merchant was incorrect.

However, this Letter of Findings is intended ONLY to conclude that Taxpayer is not a retail merchant. In no manner should this Letter of Findings be construed as relieving Taxpayer of use tax self-assessment duties on its

purchases of tangible personal property.

FINDING

Taxpayer's protest is sustained.

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